

**Letter of Findings: 65-20191063P
Indiana Oversize/Overweight Proposed Assessment
For the Year 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department sent Motor Carrier a proposed assessment for an oversize/overweight civil penalty for operating while overweight on allowable axle weight. At hearing, Motor Carrier established that the proposed assessment failed to meet statutory requirements. Therefore, Motor Carrier's protest is sustained.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Motor Carrier protests the assessment of an oversize/overweight civil penalty.

STATEMENT OF FACTS

Motor Carrier is an Indiana business engaged in transporting bulk commodities. On February 12, 2018, the Indiana State Police ("ISP") cited Motor Carrier's commercial motor vehicle for being overweight on an axle group. As a result, the Indiana Department of Revenue Motor Carrier Services Division issued Motor Carrier a proposed assessment for an oversize/overweight ("OS/OW") civil penalty. Motor Carrier disagreed with the assessment of penalty and submitted a protest to that effect. An administrative hearing was conducted during which Motor Carrier's representative explained the basis for the protest. This Letter of Findings results. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Motor Carrier protests the imposition of a civil penalty imposed on its vehicle for being overweight. The Department based its proposed assessment on a report provided by the ISP, which stated that the vehicle in question was overweight on an axle group in violation of IC § 9-20-4-1.

As a threshold issue, it is Motor Carrier's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, "an owner of a vehicle . . . may not cause or knowingly permit to be operated or moved upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required but fail to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a Motor Carrier "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 characterizes fees and penalties stemming from IC Art. 9-20 violations as a "listed tax." According to IC § 9-20-18-14.5(3), these listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, the Department issued Motor Carrier a Permit Violation Civil Penalty for being overweight for an axle group in violation of IC § 9-20-4-1. Motor Carrier contends that it should not have received a Permit Violation Civil Penalty because the tag axle - a third axle located behind the rear drive axle - on the vehicle in question automatically raises when the parking brake is set. When the ISP officer made contact with Motor Carrier, the driver stopped and set both the tractor and trailer brakes, causing the tag axle to raise. This put additional weight on the rear two axles, resulting in the scale showing an inaccurate weight. This inaccurate weight caused the ISP to issue the violation in question.

During the hearing, Motor Carrier provided evidence of the above occurrence, including a copy of the vehicle manual, a picture of the vehicle, and a picture of the operating instructions from the vehicle. This documentation established that Motor Carrier's position is correct. Therefore, Motor Carrier has met the burden of proving the proposed assessment wrong, as required by IC § 9-20-18-14.5(c).

FINDING

Motor Carrier's protest is sustained.

August 22, 2019

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